

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CRIM. NO. 2003-0028
)	
VANROY WENDALL BENJAMIN, JR.)	
)	
Defendant)	
_____)	

ATTORNEYS:

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MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on the motion of Defendant Vanroy Wendall Benjamin, Jr. to dismiss all Counts (1 and 2) of the Indictment. A hearing was held on this matter on November 26, 2003.

I. Background

On September 16, 2003, Defendant Vanroy Wendall Benjamin, Jr. was charged by Indictment with one count of corruptly threatening, influencing, obstructing, and impeding the due administration of justice in violation of 18 U.S.C. § 1503 (Count 1) and one count of corruptly attempting to influence a juror in respect to a decision of cause and proceeding in violation of 14 V.I.C. § 1501(4) (Count 2). The charges stem from Defendant's alleged action of making a threatening gesture by slashing and cutting motion across his neck to the petit jury during the trial for United States of America and the Government of the Virgin Islands v. George Osborne and Jay Watson, Criminal No. 2002-0125, in the District Court for the Virgin Islands.

Defendant's motion is made on the basis that the Indictment fails to describe the offenses charged with the particularity required by the Sixth Amendment and made applicable to the people of the Virgin Islands by Section 3 of the Revised Organic Act of 1954..

II. Analysis

A. Standard for Sufficiency of Indictment

The requirements for the content of an indictment are set forth in Rule 7(c)(1) of the Federal Rules of Criminal Procedure which provides, in part:

The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal

introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

In United States v. Rankin, 870 F.2d 109, 112 (3d. Cir. 1989), the Third Circuit adopted the three-prong test for sufficiency of an indictment set forth by the U.S. Supreme Court in Russell v. United States, 369 U.S. 749, 763 - 764, 82 S.Ct. 1038, 1047, 8 L.Ed.2d 240 (1962). Under this test, an indictment must: (1) include the elements of the offense charged, (2) inform the defendant of what he must prepare to meet, and (3) give the defendant an opportunity to accurately demonstrate to what extent he may plead a former acquittal or conviction in case of a subsequent prosecution.

B. Count 1 - Violation of 18 U.S.C. § 1503

Defendant has been charged with violating 18 U.S.C. § 1503, which states:

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror ...or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b).

Count 1 of the Indictment provides the elements of the charge, as it mirrors the language of the statute. Furthermore, by alleging that the Defendant used his hand to make a slashing motion across his neck to the jury during the trial, the Indictment clearly specifies the method by which Defendant has allegedly threatened, influenced, obstructed, and impeded the due administration of justice. This informs the Defendant what he should be prepared to defend

against and allows him to show what extent he may plead to a former acquittal or conviction in a subsequent prosecution if necessary.

Accordingly, Defendant's motion with respect to Count 1 will be denied.

C. Count 2 - Violation of 14 V.I.C. § 1501(4)

Defendant has been charged with violating 14 V.I.C. § 1501(4), which states:

Whoever corruptly attempts to influence a juror, or any person summoned or drawn as a juror, chosen as an arbitrator or appointed as a commissioner or referee, in respect to his verdict in, or decision of, any cause or proceeding, pending or about to be brought before him, by means of any – (4) promise or assurance of any pecuniary or other advantage – shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

Count 2 of the Indictment does not mirror the language of 14 V.I.C. § 1501(4). It does not contain the elements of the charge as required. Furthermore, because the Indictment fails to allege any facts with regard to Defendant making a promise or assurance, Defendant has not been informed of what he should be prepared to defend against and he is prevented from showing what extent he may plead to a former acquittal or conviction in a subsequent prosecution.

Accordingly, Defendant's motion with respect to Count 2 will be granted.

III. Conclusion

In accordance with the foregoing analysis, Defendant Benjamin's Motion to Dismiss is denied in part, granted in part. An appropriate order is attached.

ENTER:

DATED: November 26, 2003

**RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE**

ATTEST:

Wilfredo F. Morales
CLERK OF THE COURT

By: _____
Deputy Clerk

cc: Honorable Jeffrey L. Resnick, U.S. Magistrate Judge
St. Clair Theodore, AUSA
Jeffrey B.C. Moorehead, Esq.